SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 487

GEORGE MORRISON AND H. DOI, APPELLANTS,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 13, 1933

[fol. 1]

IN SUPERIOR COURT OF SAN DIEGO COUNTY

No. 69636

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

GEORGE MORRISON and H. DOI, Defendants

AMENDED INDICTMENT FOR CONSPIRACY TO VIOLATE THE ALIEN LAND LAW OF THE STATE OF CALIFORNIA

The Grand Jury of the County of San Diego, State of California, do hereby accuse George Morrison and H. Doi of a felony, to-wit: the crime of Conspiracy to violate the provisions of that certain statute submitted by Initiative, proposed to and adopted by the electors of the State of California at the general election of November 2, 1920, and as thereafter amended, entitled "An Act Relating to the Rights, Powers, and Disabilities of Aliens and of certain Companies, Associations and Corporations with respect to Property in this State, providing for Escheats in certain cases, Prescribing the Procedure therein, Requiring Reports of certain Property Holders to Facilitate the Enforcement of this Act, Prescribing Penalties for Violation of the Provisions hereof, and Repealing all Acts or parts of Acts Inconsistent or in Conflict herewith," and commonly known as the Alien Land Law of the State of California, committed as follows: to wit: the said George Mor-
[fol. 2] rison and H. Doi, and divers other persons to the grand jurors unknown, in the County of San Diego, State of California, on or about the 27th day of August, 1931, and before the finding of this indictment, did wilfully, unlawfully and feloniously combine, conspire, confederate and agree together by divers unlawful means and devices to bring about and accomplish the possession, enjoyment, use, cultivation, and occupancy, for agricultural purposes by the said H. Doi, and thereafter to continuously keep and maintain the said H. Doi in such possession, enjoyment, use, cultivation, and occupancy, for agricultural purposes,

and to the use and beneficial interest of the said H. Doi of all that certain parcel of land described as follows, to wit:

Westerly three (3) acres more or less of five acre lot ten (10) in one-quarter (¼) section 144, Rancho de la Nacion, which said land was and is agricultural land and fit and suitable for agricultural purposes; that the said H. Doi then and there was, and now is, an alien ineligible to citizenship under the laws of the United States, and then and there was a citizen and subject of the Empire of Japan, and was not and is not authorized by law or any treaty between the United States and the Empire of Japan, or any other nation or country, to acquire, possess, enjoy, use, [fol. 3] cultivate or occupy real property, nor to have, either in whole or in part, any beneficial use of or interest in real property within the State of California for agricultural purposes.

And thereafter, and while the said conspiracy was in existence and in effect, to wit, on or about the 13th day of August, 1931, and in furtherance of and to accomplish and effect the purposes and objects of the said conspiracy, the said George Morrison and H. Doi, and each of them, in the County of San Diego, State of California, did commit the following acts:

The said George Morrison did put the said H. Doi into possession of, and did permit, aid and encourage the said H. Doi to go into possession of, and to use, enjoy, cultivate and occupy the said land hereinabove described, and the said H. Doi did go into possession of the said land, and did use, enjoy, cultivate and occupy the same, and did raise and harvest crops thereon, for his own use and benefit, contrary to the form, force and effect of the statute in such case made and provided, and against the peace and dignity of the People of the State of California.

Thomas Whelan, District Attorney of the County of San Diego, by John T. Holt, Deputy District Attorney.

[fol. 4] IN SUPERIOR COURT OF SAN DIEGO COUNTY

[Title omitted]

ARRAIGNMENT AND PLEA—Feb. 17, 1932

This being the time to which the above entitled cause was continued for arraignment, comes now the District Attor-

ney by John Holt, Esq., and come the defendants in person and by counsel, E. B. Hervey, Esq., into court. The defendants waive the reading of the indictment, and upon being arraigned each of the defendants pleads that he is not guilty of the offense charged in the indictment, and by consent of counsel, said cause is set for trial on Monday, March 14th, 1932, at 9:00 A. M. thereof.

[fol. 5] IN SUPERIOR COURT OF SAN DIEGO COUNTY

[Title omitted]

STIPULATION AS TO CERTAIN FACTS

It is stipulated that the defendant George Morrison is, and was, at all times mentioned in the indictment, a native born citizen of the United States of America, and lessee of the land described in the said amended indictment; that said land is agricultural land, and at all times mentioned in said amended indictment has been used exclusively for agricultural purposes; that on or about the 27th day of August, 1931, the said George Morrison did knowingly and wilfully combine, confederate and agree with one H. Doi, to bring about and accomplish the possession, enjoyment, use, cultivation and occupancy for agricultural purposes by said H. Doi, and thereafter to continuously keep and maintain the said H. Doi in such possession, enjoyment, use, cultiva-
[fol. 6] tion and occupancy, for agricultural purposes, and to the use and beneficial interest of the said H. Doi, of all of the said land, and thereafter, and pursuant to said confederation, combination and agreement, and as a result thereof, and in furtherance of, and to accomplish and effect the purposes and objects thereof, the said George Morrison did put the said H. Doi into possession of, and did permit, aid and encourage the said H. Doi to go into possession of, and to use, enjoy, cultivate and occupy the said land, and said H. Doi did go into possession of said land, and did use, enjoy, cultivate and occupy the same, and did raise and har-

vest crops thereon, for the use and benefit of said defendants and each of them."

Dated this 31st day of March, 1932.

Thomas H. Whelan, T. W., District Attorney of the County of San Diego, State of California, by John T. Holt, Deputy; J. Marion Wright, W. K. Brown, Edgar B. Hervey, by Edgar B. Hervey, Attorneys for Defendants."

The Court: This may be considered then as the evidence in the case?

Mr. Whelan: Yes. The People rest with that.

Mr. Hervey: The defendants rest, Your Honor.

[fol. 7] IN SUPERIOR COURT OF SAN DIEGO COUNTY

[Title omitted]

MINUTE ENTRY OF TRIAL—March 31, 1932

This being the time set for trial in the above entitled cause, comes now the District Attorney Thomas Whelan and John T. Holt, Deputy; the defendants in person and by their attorney Edgar Hervey; Kate Marcellus official phonographic reporter takes down the testimony and proceedings herein.

Each of said defendants personally ask leave to waive trial by jury, same being stipulated to by the District Attorney, it is by the Court so ordered, whereupon the District Attorney offers in evidence a stipulation, and the People rest.

Defendants move for dismissal under action of Alien Land Law on the amended indictment on file herein on behalf of the defendant H. Doi, motion is argued and by the Court denied. T. Tanigashi is sworn as interpretor on behalf of H. Doi who thereupon is sworn and examined. [fol. 8] Each defendant is by the Court found guilty, whereupon defendants waive time for pronouncement of Judgment and make application for probation, and by the Court time for pronouncement of Judgment and hearing upon defendants application for probation is set for Friday, April 1st, 1932, at 1:30 P. M.

[fol. 9] IN SUPERIOR COURT OF SAN DIEGO COUNTY

[Title omitted]

MOTION FOR NEW TRIAL—Filed April 1, 1932

Come now the defendants, George Morrison and H. Doi, and do jointly and severally move this Hon. Court for a new trial in the above entitled cause upon the ground that:

I

The decision and/or judgment of the Court, finding the defendants and each of them guilty of the offense as charged in the amended indictment herein, is contrary to law; that the decision and/or judgment of the Court is contrary to the evidence; that the said decision and/or judgment of the Court is contrary to the law and the evidence.

II

That the Corpus Delicti in the above entitled cause was not established as to the defendant George Morrison; that the Corpus Delicti was not established as to the defendant [fol. 10] H. Doi.

III

That Sections 9a and 9b of the Alien Land Law of the State of California are unconstitutional; that Section 9a of the Alien Land Law of the State of California is unconstitutional; that Section 9b of the Alien Land Law of the State of California is unconstitutional; that Section 9a of the Alien Land Law of the State of California is in conflict with the Constitution of the State of California; that Section 9b of the Alien Land Law of the State of California is in conflict with the Constitution of the State of California; that Section 9a of the Alien Land Law of the State of California is in conflict with the Constitution of the United States; that Section 9b of the Alien Land Law of the State of California is in conflict with the Constitution of the United States.

IV

That Sections 9a and 9b of the Alien Land Law of the State of California are, and each of them is, in conflict with

the following provisions, and each of the following provisions, of the Constitution of the State of California, to-wit, Article I, Sections 1, 13, 17 and 21.

V

That Sections 9a and 9b of the Alien Land Law of the [fol. 11] State of California are, and each of them is, in conflict with the following provisions, and each of the following provisions, of the Constitution of the United States, to-wit, Article V, Article VI and Article XIV, Section 1.

Dated this 1st day of April, 1932.

J. Marion Wright, W. K. Brown, and Edgar B. Hervey, by Edgar B. Hervey, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 12] In Superior Court of San Diego County, Department Six

No. 69636

People of the State of California, Plaintiff,

vs.

George Morrison & H. Doi, Defendants

Judgment—April 1, 1932

This being the time set for pronouncement of Judgment, and hearing on defendants' application for probation, comes now the District Attorney by John T. Holt, Deputy, the defendants in person and by their attorney, Edgar Hervey; Kate Marcellus official phonographic reporter takes down the testimony and proceedings herein.

Defendants' counsel presents motion for new trial, and upon stipulation it is considered read into the record, and said motion is by the Court denied, whereupon the defendants are asked if they have any legal cause why sentence should not be pronounced at this time, and each answering in the negative, George Morrison is questioned by the Court and sentenced to the State Prison at San Quentin for the

term prescribed by law, and said defendant is granted probation for the term of two years, and sentence suspended during the term of probation, said term to run concurrently.

[fol. 13] H. Doi is called and E. Kawamura is duly sworn as interpretor whereupon H. Doi is sworn and examined by the Court, and Judgment rendered sentencing said defendant to the State Prison at San Quentin for the term prescribed by law; and said defendant is granted probation for the term of two years, and sentence imposed suspended during the term of said probation.

The District Attorney by John T. Holt, Deputy, makes recommendation that probation be granted without defendants paying a fine or being confined for any period as a part of the probation.

Defendants file statement of grounds for appeal and points relied upon.

[fol. 14] IN SUPREME COURT OF CALIFORNIA

Crim. No. 3601. In Bank. June 1, 1933

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

v.

GEORGE MORRISON and H. DOI, Defendants and Appellants

(1) Alien Land Law—Burden of Proof—Constitutional Law.—The provisions of section 9a of the Alien Land Act (Stats. 1927, p. 880), placing the burden of proving citizenship or eligibility to citizenship upon the defendant in any action, civil or criminal, by the state under the provisions of such act, when proof is introduced of the acquisition, possession, enjoyment, use, cultivation, occupation or transferring of real property, or interest therein, by any defendant, and the complaint, indictment or information alleges the alienage and ineligibility to United States citizenship of such defendant, are valid, and the enactment of such section was a valid exercise of the power of the legislature.

Appeal by defendants from a judgment of the Superior Court of San Diego County, A. C. Finney, Judge, of con-

viction of conspiracy to violate the Alien Land Act and from an order denying a new trial.

Affirmed. Curtis, J., dissents; Shenk and Preston, JJ., concurring.

On hearing after judgment in District Court of Appeal, Fourth District (70 Cal. App. Dec. 488), affirming judgment of Superior Court of conviction of conspiracy to violate the Alien Land Act. Judgment of Superior Court affirmed. Curtis, J., dissents; Shenk and Preston, JJ., concurring.

For Appellants: W. K. Brown, Edgar B. Hervey, J. Marion Wright.

For Respondent: Thomas Whelan, District Attorney; John T. Holt, Deputy District Attorney; U. S. Webb, Attorney General; Frank English, J. Charles Jones, James S. Howie, Deputies Attorney-General.

OPINION

This cause was transferred to this court after decision by the District Court of Appeal, Fourth District, Barnard, P. J., writing the opinion affirming the judgment.

The defendants were jointly accused by indictment of the crime of conspiring to violate the Alien Land Act of this state. (Stats. 1291, p. lxxxiii; Stats. 1923, p. 1020; Stats. 1927, p. 881.) Section 13 of said initiative measure [fol. 15] provides that the legislature may amend said measure in furtherance of its purpose. Section 9a, which appellants claim violates the due process clause of the federal Constitution and denies to them equal protection of the law, was adopted as an amendment of said initiative measure by the legislature of 1927 (Stats. 1927, p. 880.) It provides as follows:

"In any action or proceeding, civil or criminal, by the state of California, or the people thereof, under any of the provisions of this act, when the proof introduced by the state, or the people thereof, establishes the acquisition, possession, enjoyment, use, cultivation, occupation, or transferring of real property or any interest thereon, or the having in whole or in part the beneficial use thereof by any defendant, or any of such fact, and the complaint, indictment or information alleges the alienage and ineligibility

to United States citizenship of such defendant, the burden of proving citizenship or eligibility to citizenship shall thereupon devolve upon such defendant."

Section 1983, Code of Civil Procedure, which was passed by the same legislature that amended the Alien Land Act in the respect above set forth, prescribed as a rule of evidence that whenever ineligibility to citizenship is alleged in a civil or criminal proceeding brought to enforce any law which denies any right, privilege or license to any person not a citizen or not eligible to become a citizen of the United States, the burden rests upon the state or people to establish that such right, privilege or license was exercised by the person so alleged to have exercised the same, and upon such facts being so established the burden shall be upon the person claiming the right to exercise such right, privilege or license to show that at the time he exercised said rights he was a citizen of the United States or eligible to become such citizen. That section contains nothing of substance so far as the question is here involved that is not found in the amendment of the Alien Land Act of 1927. The only purpose it can serve is to make more emphatic the intention of the legislature to establish a rule of evidence which shall be applied in the class of cases of which the instant case is unquestionably one.

The indictment under which appellants were convicted alleged that they wilfully, unlawfully and feloniously combined and conspired by unlawful means and devices to bring about and accomplish the possession, enjoyment, use, cultivation and occupancy for agricultural purposes, by [fol. 16] the defendant Doi and for his use and benefit, of certain described real property situate in the county of San Diego, which real property is alleged to be agricultural in character. It is alleged that the defendant Doi was and is an alien ineligible to citizenship under the laws of the United States, and that he is a citizen and subject to the empire of Japan and not authorized by law or treaty to acquire, enjoy, occupy or to have any beneficial interest in any real property in this state for agricultural purposes. It is also alleged that in furtherance of said conspiracy, and for the purpose of accomplishing and effecting the purposes and objects thereof, the defendant Morrison put the

defendant Doi into possession of the agricultural land described, and permitted, aided and encouraged him to take possession thereof and to use, enjoy, cultivate and occupy the same, and that the defendant Doi took possession of said land, used, enjoyed, cultivated and occupied the same and raised and harvested crops thereon for his own use and benefit.

Trial by jury was waived and the action was tried before the court. The only evidence introduced consisted of the following stipulation: "It is stipulated that the defendant George Morrison is, and was at all times mentioned in the indictment, a native-born citizen of the United States of America, and lessee of the land described in the said amended indictment; that said land is agricultural land, and at all times mentioned in said amended indictment has been used exclusively for agricultural purposes; that on or about the 27th day of August, 1931, the said George Morrison did knowingly and wilfully combine, confederate and agree with one H. Doi to bring about and accomplish the possession, enjoyment, use, cultivation and occupancy for agricultural purposes by said H. Doi, and thereafter to continuously keep and maintain the said H. Doi in such possession, enjoyment, use, cultivation and occupancy, for agricultural purposes, and to the use and beneficial interest of the said H. Doi, of all of the said land, and thereafter, and pursuant to said confederation, combination and agreement, and as a result thereof, and in furtherance of, and to accomplish and effect the purposes and objects thereof, the said George Morrison did put the said H. Doi into possession of, and did permit, aid and encourage the said H. Doi to go into possession of, and to use, enjoy, cultivate and occupy the said land, and said H. Doi did go into possession of said land, and did use, enjoy, cultivate and occupy the same, and did raise and harvest crops thereon, for the use and benefit of said defendants and each of them."

By the above stipulation it will be seen that the agricul-[fol. 17] tural character of the lands and the execution of the lease and the entry into the possession thereof by defendant H. Doi (alleged to be a citizen and subject of the empire of Japan) and all facts necessary under the Alien Land Act to sustain a conviction except ineligibility are admitted. The defendants having failed to offer any evi-

dence touching the qualification of Doi to exercise the rights of citizenship, or to meet the burden cast upon him, were adjudged guilty as charged, and released on probation. This appeal is from the judgment of conviction and order denying a new trial.

(1) Appellants' sole attack is made upon that portion of the decision in the case of People v. Osaki, 209 Cal. 169, which sustains the power of the legislature to cast the burden upon aliens charged in the manner provided by the acts in question to prove their eligibility to own, possess or occupy agricultural land. While it was pointed out in that case that the evidence produced by the prosecution was sufficient of itself to show that the accused was an ineligible alien without the necessity of invoking the aid of the burden of proof provisions of said amendment to the Alien Land Act and said statutes, the validity of such burden of proof provisions was nevertheless brought into question and considered by us at great length. In fact, by far the greater portion of the decision was given to a consideration of the validity of said sections which cast the burden of proof upon the accused. In our discussion of the question here pressed by appellants we said:

"We are of the view that the better reason supports the conclusion that the burden in cases involving questions of naturalization and a lienage has always been upon the defendant, who has intimate and previous knowledge of the fact."

Again we said:

"It is not intended by what we have said to extend the rule of convenience or burden of proof to common-law crimes generally designated as malum in se nor to all crimes malum prohibitum. We go no further than to apply the rule to the particular situation in accordance with the express mandate of said amendments."

Counsel for appellants recognize the relevancy and application of the authorities cited in the Osaki case to the instant case, and asks that we disapprove of the rule therein adopted and apply the doctrine announced in People v. Quarez, 196 Cal. 404. That case leans heavily upon People [fol. 18] v. Frey, 165 Cal. 140, which, as pointed out in the

Osaki case, was adopted by a bare majority of the court. People v. Quarez and People v. Frey and many other cases of our own and other jurisdictions were exhaustively considered in the Osaki case, and counsel in the instant case has presented no important authorities or additional arguments which were not drawn to our attention in the Osaki case. Both the Quarez and Frey cases recognize the rule ab inconvenienti, commonly known as the rule of necessity or convenience, but seek to limit its application to the prosecution of persons charged with the violation of statutes regulating the practice of medicine and other professions and certain callings which provide that a license shall first be obtained before any person may engage in the practice of said professions or callings. The rule of convenience or necessity is of common law origin and was a rule of evidence as early as 1816, a period long prior to the adoption of the modern system requiring persons to obtain a license before they may engage in particular callings, which system has become quite universal as conducive to public health and safety during the present and latter part of the past century.

Chief Justice Ellenborough recognized the rule more than a century ago in the case of King v. Turner, 5 Maule and Selwyn's Reports, 206. This early case did not involve the question of licensing a calling, but was bottomed on the want of qualification on the part of the accused for having game in his possession. The identical principle is presented in the instant case, to-wit, a want of qualification to enjoy an exclusive privilege of citizenship. Lord Ellenborough states the question as being one upon whom the onus probandi lies; whether it lies upon the person who affirms a qualification to prove the affirmative, or upon the prosecutor who denies any qualification to prove the negative. He observes that there were about ten different heads of qualification enumerated in the statute to which proof might be applied, and, according to the argument made, every person who laid an information as to qualification of the accused would be bound to give satisfactory evidence before the magistrates to negative the defendant's qualification upon each of those several heads. "The argument," the eminent jurist remarks, "really comes to this, that there would be a moral impossibility of ever convicting upon such an information. If the informer should establish the negative of any part of these different qualifications, that would be in-

sufficient, because it would be said, non liquet, but that the defendant may be qualified under the other. And does not, then, common sense show that the burden of proof ought to be cast on the person who, by establishing any one of the [fol. 19] qualifications, will be well defended? Is not the statute of Anne in effect a prohibition on every person to kill game, unless he brings himself within some one of the qualifications allowed by law, the proof of which is easy on the one side, but impossible on the other?"

The great jurist makes reference to Lord Mansfield in Spiers v. Parker, and states that he finds him laying down the rule that in actions upon the game laws, and he saw no good reason why the rule should not be applied to informations as well as actions, the plaintiff must negative the exceptions in the enacting clause, though he throw the burden of proof on the other side. Continuing he said:

"The same was said by Heath, J., in Jelfs v. Ballard; and such I believe has been the prevailing opinion of the profession, and the practice. I am, therefore, of the opinion that this conviction, which specifies negatively in the information the several qualifications mentioned in the statute is sufficient, without going on to negative, by the evidence, those qualifications."

Bayley, J., in a concurring opinion, said that no hardship was cast upon the defendant by the above rule because the defendant must be presumed to know his own qualification and to be able to prove it.

Holrod, J., concurring, said that it was a general rule that the affirmative is to be proved, and not the negative, of any fact which is stated, unless under peculiar circumstances, where the general rule does not apply. He holds that where it is shown that qualification to exercise a right or privilege is peculiarly within the knowledge of the person assuming to exercise the same, the burden is on such person to prove it.

It will be observed that the rule thus early recognized was not confined to medical cases, but to all of that class of cases in which the qualification of the person to exercise a privilege was the issue. The question before us is one in which qualification is the crux of the proposition. The books are replete with decisions which follow the rule early announced by Chief Justice Ellenborough and concurred

in by his associates. Justice Story, in United States v. Hayward, 26 Fed. Cas. 240 (No. 15,336), recognized the rule at length in a case wherein the question arose as to the necessity of negativing the neutrality of a vessel in which goods were brought into this country. In his consideration of negative allegations he holds the reasonable rule is that [fol. 20] the burden of proof shall rest upon the party who holds the affirmative, and especially where the facts are peculiarly within his privity and cognizance. In Casey v. United States, 276 U. S. 413, 72 L. Ed. 632, 48 Sup. Ct. Rep. 373, involving the illegal possession of morphine, Mr. Justice Holmes said:

"It is consistent with all the constitutional protections of accused men to throw on them the burden of proving facts peculiarly within their knowledge and hidden from discovery by the government." (1 Greenleaf on Evidence, sec. 79; 4 Wigmore on Evidence, sec. 2486; Yee Hem v. United States, 268 U. S. 178, 69 L. Ed. 904; Mobile etc. R. R. v. Turnipseed, 219 U. S. 35; State v. Miller, 182 Mo. 370; 81 S. W. 867; State v. Abbey, 29 Vt. 60, 67 Am. Dec. 754; People v. Goscinsky, 52 Cal. App. 62; People v. T. Wah Hing, 47 Cal. App. 327.)

The question of corpus delicti and compelling the accused to be a witness against himself are fully discussed in a number of the cases cited in People v. Osaki, supra, and it is held that no right of the accused is denied or abridged by the application of the rule of convenience in cases where qualification is made the test of the right to enjoy a certain privilege, and the qualification upon which he asserts his right is peculiarly within the knowledge of the person exercising such privilege.

People v. Velasquez, 70 Cal. App. 362, 233 Pac. 359, Curtis, J., writing the opinion, held contrary to People v. Quarez, supra, and we are of the view that the treatment of and the application of the rule of convenience made by the District Court of Appeal is sound and in reason and is sustained by the greater weight of authority. It held that the accused had absolute knowledge as to whether he was a naturalized citizen, and the burden was on him to offer his proof. If the People in this case should be required to prove the negative the enforcement of the law

would be defeated by imposing upon the People the impossible task of making a thorough and painstaking search of the entire United States and its dependencies in probably a vain effort to establish the non-existence of a naturalization record. This case was published about the time that the Quarez decision was rendered. The first legislature that convened after the Quarez decision became the law, in an effort to supply the ground upon which a contrary decision might rest, adopted the amendment and statutes now before us, casting the burden of proof upon persons whose rights to exercise certain privileges granted only to citizens may be challenged upon the grounds of alienage as in said stat- [fol. 21] utes provided.

That it is competent for the state in the exercise of its sovereign power to reserve the ownership, occupancy and control of its agricultural lands for the benefit of its citizens or those eligible to become such, and that it may as a means of determining such eligibility when it is drawn into question by an appropriate proceeding cast upon the person claiming or assuming the right to own, occupy or control said land, the burden of proving his eligibility, are propositions that are entrenched in reason and supported by the great weight of eminent authority, and cannot be seriously questioned.

Medical license cases and liquor cases furnish a fertile field for the application of the rule of convenience or necessity. But it will be found upon an examination of the cases that the rule has been applied to cases of bigamy, relationships, the right to take game, possession of opium, questions of neutrality, and in fact generally to all cases of qualification where the right to enjoy a privilege is peculiarly within the knowledge of the person exercising such privilege, and not within the knowledge of the state which challenges the right by negative allegations. No case can easily be imagined which so aptly justifies the application of the rule of necessity and convenience as do the facts and circumstances which constitute the basis of the instant case. It would be beyond reason to require the state to search the records of every city, parish and county of the nation in proof of a negative when the question of qualification is peculiarly within the knowledge of the person who asserts the right to enjoy a privilege which attaches to citizenship alone.

We have given no special consideration to section 9b of said amendment to the Alien Land Act, for the dual reason that it is not material to the issue involved in the instant case, and its effect was fully considered in the Osaki case. That section provides that when the proof shows the defendant to be a member of a race ineligible to citizenship under the naturalization laws of the United States, the burden of proving citizenship or eligibility as a defense shall thereupon devolve upon such defendant. It is specially provided by said section that it shall not modify, limit or affect in any manner the provisions of said section 9a. Said section 9b was doubtless adopted as a measure offering some assistance in the way of making the act effective if section 9a should for any reason fail.

In the prosecution of cases of this class the burden of [fol. 22] proof is upon the prosecution to affirmatively establish every element constituting the offense, save the want of eligibility on the part of the accused. There is nothing unreasonable or unjust in the rule which requires the accused to prove his eligibility. The legislature has determined that the safety and welfare of the state depend largely upon the ownership of its agricultural land remaining in the hands of its citizens, or those eligible to become such. The United States Supreme Court in a number of decisions has approved this policy. The legislature by statutory enactment has cast the burden upon those whose eligibility is challenged in the name of state of proving such eligibility. It is entirely competent for it to do so.

Judgment affirmed.

Seawell, J.

We concur:

Tyler, J., pro Tem. Langdon, J. Waste, C. J.

IN SUPREME COURT OF CALIFORNIA

DISSENTING OPINION

I dissent. The crime charged against the defendants consists of two elements, (1) the alienage and ineligibility to citizenship of H. Doi, and (2) the possession of agricultural lands by said defendants. The second of these

two elements was proven, but there was no evidence whatever in support of the first element—alienage and ineligibility to citizenship of H. Doi. Under section 9a of the Alien Land Act as the alienage and ineligibility to citizenship was alleged in the indictment the burden of proving citizenship or eligibility to citizenship was cast upon the defendants. The conviction of the defendants must stand, therefore, if this section of the Alien Land Act is a valid exercise of legislative power. The majority opinion sustains the validity of the law in question. In the first place it is apparent that there is a marked distinction between the instant case and the case of People v. Osaki, 209 Cal. 169. In that case there was direct proof, and this fact was emphasized throughout the opinion, not only that the defendant Osaki was in the possession of agricultural lands, but also that he was a member of the Japanese race. Under section 9b of the Alien Land Act proof of these facts creates "a prima facie presumption of ineligibility to citizenship." [fol. 23] The constitutionality of section 9a of said act is not questioned. Under that section it is necessary to prove two facts: First, that the defendant is in possession of agricultural lands of this state, and second, that he is a member of a race ineligible to citizenship. Under section 9a, however, only one of these facts is required to be proven, and that is that the defendant is in possession of agricultural lands of this state. From this one fact under said section the presumption may be drawn that the defendant is a member of a race ineligible to citizenship and that he is also ineligible to citizenship. Referring back to section 9b of the act and the legislative presumption therein created, we find that upon proof that the defendant is a member of a race ineligible to citizenship, the presumption arises that he is ineligible to citizenship. It is clear that there is a reasonable and rational connection between the fact thus proven and the fact presumed. It is reasonably probable that a member of the Japanse race, for instance, was born in Japan and is, therefore, ineligible to citizenship under the laws of this country. But under section 9a of the act, the only fact necessary to prove is that the defendant is in possession of agricultural lands and the burden of proving that he is ineligible

to citizenship is then cast upon the defendant, or which amounts to the same thing, the defendant is then presumed to be ineligible to citizenship. From the foregoing statement, I think it clearly appears that there is no rational or reasonable connection or relation between the fact proven and the fact presumed. The fact that a person is in possession of agricultural lands of the state does not in the least tend to prove that he is a member of any particular race, much less of a race, the members of which are denied citizenship under our laws. The validity of legislation creating presumptions similar to that provided for by section 9a of said act has frequently been before the courts of this and other jurisdictions with the result that it has uniformly been declared invalid. One of the leading cases upon this subject is that of McFarland v. American Sugar Refining Co., 241 U. S. 79. In that case the legislature of Louisiana had enacted a statute which purported to impose penalties for monopolies and conspiracy in relation to trade. By this statute it was provided that: "Any person engaged in the business of refining sugar within this state who shall systematically pay in Louisiana a less price for sugar than he pays in any other state, shall be prima facie presumed to be a party to a monopoly or combination or conspiracy in restaint of trade and commerce, and upon conviction thereof shall be subject to a fine. * * *" The Supreme Court of the United States held that this presumption was invalid as being in violation of the Fourteenth Amendment to the Constitution, and speaking through Mr. Justice Holmes said:

[fol. 24] "As to the presumptions, of course the legislature may go a good way in raising one or in changing the burden of proof, but there are limits. It is 'essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate'. (Mobile, J. & K. C. R. Co. v. Turnipseed, 219 U. S. 35, 43, 55 L. ed. 78, 80, 32 L. R. A. (N. S.) 226, 31 Sup. Ct. Rep. 136, Ann. Cas. 1912A, 463, 2 N. C. C. A. 243.) The presumption created here has no relation in experience to general facts."

In O'Neill v. United States, 19 Fed. (2d) 322, the defendant was accused with violation of the Harrison Anti-

Narcotic Act. In that case the defendant was convicted of the offense of selling drugs without paying the special tax provided by the statute. The prosecution relied upon the prima facie presumption which was claimed to arise under the statute from the possession of unstamped drugs. In discussing this presumption, the court said:

"The general principle is well recognized that even in criminal prosecutions, congress or a state legislature may with certain limitations enact that when certain facts have been proved they shall be prima facie evidence of the existence of the main fact in question. (12 C. J., p. 823, sec. 285.) The limitations are these: There must be some rational connection between the fact proved and the ultimate fact presumed; the inference of the existence of the ultimate fact from proof of the other facts must not be so unreasonable or unnatural as to be a purely arbitrary mandate. * * *"

Further on in the opinion, the court also said:

"In our opinion, congress could not reasonably enact that possession of unstamped narcotic drugs should be prima facie evidence of a violation of the first penal provision of section 1."

In the case of Simpkins v. State, 249 Pac. 168, the court had under consideration a statute of Oklahoma providing that if a person driving an automobile had on or about his person any intoxicating liquors that fact would constitute prima facie evidence of such person having driven while intoxicated. After discussing the constitutional limitations as to legislation of that character the court said:

[fol. 25] "It is apparent that the presumption here created violates this limitation, since, in order to draw the conclusion of intoxication from the fact of a driver of an automobile having intoxicating liquors on his person or in said vehicle, there must first be the inference that the driver had used the intoxicants, and the further inference that he had used them to such an extent that he was under the influence thereof to the extent of intoxication. The presumption of intoxication fixed by the statute is also contrary to the fundamental requirement that the inference or presumption of intoxication arising from the possession of

the person or in the vehicle of liquors must be a probable or natural hypothesis or explanation of such possession. The inference between the fact of possession and the presumption of intoxication is too remote."

To the same effect are two recent decisions of the Supreme Court of the United States: Manley v. Georgia, 279 U. S. 1, where the court held unconstitutional a statute of Georgia which allowed a conviction of fraud upon mere proof of insolvency, on the ground that the statutory presumption was not rational and that the connection between the fact proved and that presumed was not rational; and Western & Atlantic Railroad v. Henderson, 279 U. S. 639, holding unconstitutional a statute providing for a shifting of the burden of proof on the issue of negligence upon the mere proof of a collision upon the ground that a statute cannot provide for the shifting of the burden of proof on the basis of a presumption which is arbitrary and irrational.

Many other authorities to the same effect might be cited but we deem the above sufficient for our present purpose. These cases uniformly hold that in order to sustain such a legislative presumption as that created by section 9a of said act, it is absolutely necessary that there be some rational or reasonable connection between the fact proven and the fact presumed. In the present case there is no semblance of such a connection. The mere fact that a defendant is brought into court and proof is made that he is using or is in possession of real property susceptible of producing agricultural products is made the basis of a presumption that he is an alien ineligble to citizenship. There can be no possibility of any rational claim that the possession of land of that character by a defendant gives rise to any inference or presumption as to his alienage or citizenship. In at least some of the cases cited there may be said to be some connection, though slight, between the fact proven and the fact presumed. For instance, in the case of the driver of an automobile with intoxicating liquor [fol. 26] in his possession, it might well be said that there is some slight although rather shadowy connection between the fact that the accused had intoxicating liquor in his possession and the fact of his intoxication, yet the court held such legislative presumption to be invalid. But in the case before us there is not the slightest connection or relation-

ship between possession of real property and the alienage or citizenship of the person in its possession. According to the unbroken line of authorities, a presumption created by a statute and based upon proof of such an unconnected and unrelated fact cannot be sustained as a valid exercise of legislative power. (State v. Lapointe, 81 N. H. 227, 123 Atl. 692.)

Curtis, J.

We concur:

Shenk, J. Preston, J.

[fol. 26½] [File endorsement omitted]

[fol. 27] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

PETITION OF APPELLANTS THAT SUPREME COURT HEAR AND DETERMINE CAUSE AFTER DECISION BY DISTRICT COURT OF APPEAL

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the State of California:

The appellants respectfully petition that your Honorable Court grant a hearing and determination of the above entitled cause after decision rendered therein by the District Court of Appeal in and for the Fourth Appellate District and base said request upon the grounds hereinafter set forth:

First, that section 9a of the Alien Land Act (Stats. 1927, p. 880) deprives these appellants and each of them of liberty and property without due process of law in violation of the Fourteenth Amendment of the Constitution of the [fol. 28] United States.

Second, that section 1983 of the C. C. P. (Stats. 1927, p. 434) deprives these appellants and each of them of liberty and property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

Third, that the judgment of the District Court of Appeal, Fourth Appellate District, as announced in its opinion on file, a copy of which is attached hereto, deprives these ap-

pellants and each of them of the equal protection of the laws by imposing a heavier burden on persons accused of violating the Alien Land Act, particularly if they appear to be of a race ineligible to citizenship than upon other persons accused of any crime which is malum in se or of any other crime which is malum prohibitum and also by imposing a heavier burden upon persons of Oriental race than upon persons who speak other languages, or are of other races, each and all of such distinctions having no reasonable or just basis and constituting therefore a denial of the due process of law and the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

Fourth, that it is necessary that this rehearing be granted to settle important questions of law.

[fol. 29] In support of each of the foregoing grounds, we respectfully submit the following points upon which appellants rely. Attached hereto is a copy of the opinion — Honorable District Court of Appeal.

Points Upon Which Appellants Rely

All of the evidence introduced in this case consists of a stipulation which is set forth in the opinion of the Honorable District Court of Appeal. Said Court, basing its decision on the case of People v. Ozaki, 209 Cal. 169, decided that Section 9a of the Alien Land Act was constitutional. We did not feel that the Ozaki decision, although rendered by this Honorable Court, was with the weight of authorities, and therefore petitioned for re-hearing before the District Court of Appeal Fourth Appellate District, and said petition having been denied, this petition was brought for the purpose of presenting it again to this Honorable Court, having in view to present the matter to the United States Supreme Court, with this court's consent if this court follows its former decision, viz: People v. Ozaki, 209 Cal. 169.

We will devote very little time in this petition to going over the authorities, which we think should have been followed by this court at the time of the Ozaki decision. How-
[fol. 30] ever, assuming that this court carefully considered these cases it will not be necessary to again urge them.

The Ozaki case, 209 Cal. 169, is professedly based upon the presumption that the rule of convenience applies to the

instant case merely because the facts are difficult to prove and are within the knowledge of defendant.

None of the cases cited in that opinion go that far. In our opinion they all appear to be cases involving exceptions, or license or defenses by way of mitigation. If the Ozaki case is allowed to stand it seems to us that every criminal statute can likewise be construed and proof of almost any element of any crime may be dispensed with, if only the defendant knows the facts and if they are difficult to prove. It follows that if the opinion is correct in its statement of principle, every person may be presumptively guilty of almost every crime, subject, however, to his right to prove he is not guilty. The opinion indicates, however, that the rule cannot be applied to any crime malum in se or to any other crime malum prohibitum. The decision seems to be that the burden of proving the nativity and citizenship of the defendant may be cast on him because these facts are peculiarly within his knowledge. On this ground it is sought to excuse the state from proving [fol. 31] part of the corpus delicti.

The Ozaki case in effect overruled several decisions of the Supreme Court, viz: People v. Quarez, 196 Cal. 404; and People v. Fray, 165 Cal. 140. By overruling the Quarez case and the Fray case a dangerous precedent was established, as apparently there is no limit to which the legislature may go in shifting the burden of proof in criminal cases upon the defendant to prove his innocence rather than upon the state to prove his guilt.

In other words, the Ozaki case seems to have taken away from the defendants the guard of "due process of law" which has been with the defendants ever since the adoption of the Fourteenth Amendment to the Constitution of the United States.

It is well settled law that the legislature has no constitutional power to provide that in a criminal case a presumption adverse to the defendant shall arise from the proof of other facts unless there is a reasonable connection between the fact proved and the inference which the statute directs be drawn therefrom. This principle seems to be sustained in the following cases: McFarland v. American Sugar Refining Co., 241 U. S. 79; Bailey v. State of Alabama, 219 U. S. 219; Brightman v. U. S., 7 Fed. 2d, [fol. 32] 532; O'Neill v. U. S., 19 Fed. 2d, 322.

Unless there is a connection between the fact proved and the inference, which connection is based upon reason and supported by evidence, the statute is unconstitutional. In the present case there is no semblance of any such connection. The mere fact that a defendant is brought into court and that he has used or enjoyed real property is made the basis of a presumption that he is an alien ineligible to citizenship. There is no possibility of any rational claim that the possession of land by a defendant gives rise to any inference one way or the other as to whether he is a citizen or alien, nor as to whether he is an alien who is eligible to citizenship or one who is not so eligible. We still feel that Section 9a violates due process of law and the equal protection of the laws. We have not cited cases or many authorities, nor argued this petition as strenuously as we perhaps should, but we feel that all of the cases on this subject were carefully considered by this court in the case of People v. Ozaki, 209 Cal. 169, and that this court is not apt to change its views rendered in that decision. However, we do intent to have this question, as well as the question relating to Section 9b presented to the United States Supreme Court with the consent of this court, and it is necessary to ask for this re-[fol. 33] hearing in order to be able to make our way to the United States Supreme Court.

However, we wish this court to know that we are sincere in our statement that the Okaki case should not be permitted to stand without having it presented to the United States Supreme Court for its views.

Respectfully submitted.

J. Marion Wright, Attorney for Appellants.

[fol. 34] Fourth Appellate District, August 5, 1932

Crim. No. 232

The People of the State of California, Plaintiff and Respondent,

v.

George Morrison and H. Doi, Defendants and Appellants

(1) Alien Land Law—Evidence—Presumptions—Burden of Proof—Constitutional Law—Equal Protection.—Section

1983 of the Code of Civil Procedure as adopted in 1927 and section 9a of the Alien Land Law (Stats. 1927, p. 881), relating to the presumption of alienage and ineligibility to citizenship and to the burden of proof thereof, are not unconstitutional as violating the due process clause of the 14th amendment to the federal Constitution.

Appeal by defendants from a judgment of the Superior Court of San Diego County, A. C. Finney, Judge, of conviction of conspiracy to violate the Alien Land Act and from an order denying a new trial.

Affirmed.

For Appellants: J. Marion Wright.

For Respondent: U. S. Webb, Attorney-General, and James S. Howie, Deputy Attorney-General.

The defendants were jointly accused by indictment of the crime of conspiring to violate the Alien Land Act of this state. (Stats. 1921, p. lxxxiii; Stats. 1923, p. 1020; Stats. 1927, p. 881.) The indictment alleged that the defendants willfully, unlawfully and feloniously combined and conspired by unlawful means and devices to bring about and accomplish the possession, enjoyment, use, cultivation and occupancy for agricultural purposes, by the defendant Doi and for his use and benefit, of certain described real property situated in the county of San Diego, which real property is alleged to be agricultural in character. It is alleged that the defendant Doi was and is an [fol. 35] alien ineligible to citizenship under the laws of the United States, and that he is a citizen and subject of the empire of Japan and not authorized by law or treaty to acquire, enjoy, occupy or to have any beneficial interest in any real property in this state for agricultural purposes. It is also alleged that in furtherance of said conspiracy and for the purpose of accomplishing and effecting the purposes and objects thereof, the defendant Morrison put the defendant Doi into possession of the agricultural land described, and permitted, aided and encouraged him to take possession thereof and to use, enjoy, cultivate and occupy the same, and that the defendant Doi took possession of said land, used, enjoyed, cultivated and occupied the same and

raised and harvested crops thereon for his own use and benefit.

Trial by jury was waived and the action was tried before the court. The only evidence introduced consisted of the following stipulation: "It is stipulated that the defendant George Morrison is, and was, at all times mentioned in the indictment, a native born citizen of the United States of America, and lessee of the land described in the said amended indictment; that said land is agricultural land, and at all times mentioned in said amended indictment has been used exclusively for agricultural purposes; that on or about the 27th day of August, 1931, the said George Morrison did knowingly and wilfully combine, confederate [fol. 36] and agree with one H. Doi, to bring about and accomplish the possession, enjoyment, use, cultivation and occupancy for agricultural purposes by said H. Doi, and thereafter to continuously keep and maintain the said H. Doi in such possession, enjoyment, use, cultivation and occupancy, for agricultural purposes, and to the use and beneficial interest of the said H. Doi, of all of the said land, and thereafter, and pursuant to said confederation, combination and agreement, and as a result thereof, and in furtherance of, and to accomplish and effect the purposes and objects thereof, the said George Morrison did put the said H. Doi into possession of, and did permit, aid and encourage the said H. Doi to go into possession of, and to use, enjoy, cultivate and occupy the said land, and said H. Doi did go into possession of said land, and did use, enjoy, cultivate and occupy the same, and did raise and harvest crops thereon, for the use and benefit of said defendants and each of them."

The defendants were found guilty and released on probation. This appeal is from the judgment and from an order denying a motion for a new trial.

(1) The only point raised is that section 9a of the Alien Land Act as adopted in 1927 (Stats. 1927, p. 881), and section 1983 of the Code of Civil Procedure, also adopted in 1927, are unconstitutional as violating the due process of law clause of the 14th amendment to the Constitution of the [fol. 37] United States.

Section 9a of this act, thus attacked, reads as follows:

"In any action or proceeding, civil or criminal, by the State of California, or the people thereof, under any of the provisions of this act, when the proof introduced by the state, or the people thereof, establishes the acquisition, possession, enjoyment, use, cultivation, occupation, or transferring of real property or any interest therein, or the having in whole or in part the beneficial use thereof by any defendant, or any of such fact, and the complaint, indictment or information alleges the alienage and ineligibility to United States citizenship of such defendant, the burden of proving citizenship or eligibility to citizenship shall thereupon devolve upon such defendant."

Section 1983 of the Code of Civil Procedure need not be here quoted, but in brief and so far as here material, it provides that the burden of proving his citizenship or eligibility to citizenship shall rest upon a defendant in such a case as this, when it is alleged that a right or privilege forbidden by the Alien Land Act has been exercised by the defendant and that he is not a citizen of the United States and not eligible to become such a citizen, and when it has been established that the defendant in question has exercised such a forbidden right or privilege.

This case is presented as being one in all respects similar to the case of People v. Ozaki, 209 Cal. 169, with the exception that this action relates only to the validity of section 9a of this act. The only argument made is to the effect that the decision in the case just mentioned is erroneous. [fol. 38] In the case before us there is neither evidence as to the nationality or race of the defendant Doi nor evidence that he was an alien ineligible to citizenship. To that extent this case may differ from the case of People v. Ozaki, as the court there pointed out that the defendant therein was apparently conceded by his counsel to be of the Japanese race, and in passing upon a certain instruction, the court remarked that the case was apparently tried on the theory that the defendant was of alien, ineligible blood. However, in passing upon the main question there involved, as to whether the 1927 amendments to the Alien Land Act were unconstitutional as violating the due process clause of the state and federal Constitutions, the court said:

"No evidence was offered by either side pointedly directed to the citizenship of said alleged alien. If the Alien

Land Acts, which cast upon said alleged alien the burden of proving his citizenship or eligibility to citizenship under the naturalization laws of this country as a prerequisite to the enjoyment of the rights which the evidence shows he undoubtedly exercised, are not in conflict with the due process provisions of the state and federal Constitutions, the judgments of conviction must stand."

The question thus stated is the same question now raised in this case, although here limited to section 9a of this act. While the court in the case just referred to considered sections 9a and 9b together, it discussed the question now before us at considerable length and, as we take it, arrived at the conclusion that neither section 9a nor section 9b of [fol. 39] this act is in conflict with the due process clause of the Constitution.

We regard the decision in the case referred to as controlling in the instant case, and upon that authority the judgment and order appealed from are affirmed.

Barnard, P. J.

We concur.

Marks, J. Jennings, J.

[fol. 40] IN SUPREME COURT OF CALIFORNIA

In Bank

[Title omitted]

ORDER GRANTING PETITION FOR HEARING—Filed Sept. 2, 1932

By the COURT:

The Appellants' petition to have the above entitled cause heard and determined by this Court after judgment in the District Court of Appeal of the Appellate District is granted and said cause transferred to this Court for hearing and decision.

Dated this 1st day of September, 1932.

Waste, Chief Justice. Seawell, Justice. Tyler, J., p. t. Curtis, Justice. Preston, Justice. Langdon, Deputy, D., Atty. for Respondent.

[File endorsement omitted.]

Clerk's certificate to foregoing paper omitted in printing.

[fols. 41 & 42] Bond on appeal for $500.00, approved and filed Aug. 11, 1933, omitted in printing.

[fol. 43] [File endorsement omitted]

Received copy Aug. 11, 1933.
U. S. Webb, Atty. General, by Frank English, Deputy, D., Atty. for Respondents.

[fol. 44] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed Aug. 11, 1933

The petition of George Morrison and H. Doi, appellants herein, respectfully represents:

I

That appellants, conceiving themselves aggrieved by the judgment herein, and the decision of the Supreme Court of the State of California, heretofore rendered on June 1, 1933, sustaining and affirming the judgment of conviction against appellants in a criminal action lately pending in the Superior Court in and for the County of San Diego, State of California, for the reasons specified in the assignments of error filed herewith, desire to appeal from said judgment, and desire that said appeal returnable to the Supreme [fol. 45] Court of the United States, shall act as a supersedeas and suspend during the pendency of said appeal, the effect of said judgment.

Your petitioners further represent that the judgment and decision of the said Supreme Court of the State of California, rendered as aforesaid, is a decision where is drawn in question the validity of the statutes or authorities exercised under the statutes of the State of California, on the ground of their being repugnant to the Constitution, or laws of the United States, and the decision herein is in favor of their validity.

Wherefore, petitioners pray that said appeal may be allowed, that said appeal may operate as a supersedeas and

suspend, during the pendency of said appeal, the effect of the judgment rendered herein;

That said appeal be made returnable to the Supreme Court of the United States, according to law, and that a transcript of the records, proceedings, papers and exhibits upon which said judgment was rendered, duly authenticated, be sent to the Supreme Court of the United States.

J. Marion Wright, Attorney for Appellants, Citizens National Bank Building, Los Angeles, California.

[fol. 46] [File endorsement omitted]

Received copy. Aug. 11, 1933.

U. S. Webb, Attorney General, by Frank English, Deputy, D., Atty. for Respondent.

[fol. 47] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Aug. 11, 1933

Come now George Morrison and H. Doi, appellants in the above entitled cause, and respectfully submit that in the record, proceedings, decision and final judgment of the Supreme Court of the State of California in the above entitled matter there is manifest error in this, to wit:

I

That the Court erred in holding that Section 9a of the Alien Land Act as adopted in 1927 (Stats. 1927 p. 881) and Section 1983 of the Code of Civil Procedure of the State of California, also adopted in 1927, were constitutional, and do not violate the Fourteenth Amendment to the Constitution of the United States.

[fol. 48] II

The Court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927 p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, were constitutional, and do not violate the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

III

The Court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927 p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, did not deprive appellants and other citizens of the United States and of the State of California, of rights, privileges and immunities secured to the citizens of the United States by the Federal Constitution.

IV

The Court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927 p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, did not deprive appellants and other citizens of the United States of liberty and property without due process of law.

V

The Court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927 p. 881) and Section 1983 of the Code of Civil Procedure, [fol. 49] also adopted in 1927, did not deprive and deny to appellants and certain citizens and persons within the jurisdiction of the State of California the equal protection of the law.

VI

The Court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927 p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, which provide that in any action or proceeding, civil or criminal, by the State of California, or the people thereof, under any of the provisions of said Act, when the proof introduced by the State, or the people thereof, establishes the acquisition, possession, enjoyment, use, cultivation, occupation, or transferring of real property, or any interest therein, or the having in whole or in part the beneficial use thereof by any defendant, or any of such fact, and the complaint, indictment, or information, alleges the alienage and ineligibility to United States citizenship of said defendant, the burden of proving citizenship or eligibility to citizenship shall there-

upon devolve upon the defendant, are not in conflict with the due process — law provisions of the Constitution of the United States and the Constitution of the State of California.

VII

The Court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927 [fol. 50] p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, which cast upon the defendant, H. Doi, the burden of proving his citizenship or eligibility to citizenship under the naturalization laws of the United States, without requiring any proof whatsoever to be first made by the State or the people, and solely by reason of an allegation in the indictment alleging the ineligibility to United States citizenship of said defendant, are not in conflict with the due process of law provisions of the Constitution of the United States and the Constitution of the State of California.

VIII

The Court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927 p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, which cast upon the defendant, H. Doi, the burden of proving his citizenship or eligibility to citizenship under the naturalization laws of the United States as a prerequisite to the enjoyment and occupation, or a beneficial interest in real estate in California, for agricultural purposes, are not in conflict with the due process of law provisions of the Constitution of the United States and the Constitution of the State of California.

IX

The Court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927 [fol. 51] p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, or statutes of the State of California, placing upon appellant H. Doi the burden of showing he is a citizen of the United States by birth or by naturalization, solely by reason of the allegation of his ineligibility to citizenship in the indictment, without any proof of any kind as to his citizenship or ineligibility to become a

citizen, do not violate the due process clause and Section 13, Article I of the Constitution of California, and are not discriminatory or in violation of the equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

X

The Court erred in applying to the case the so-called "rule of evidence", that is, the rule that when the negative of the issue does not readily permit direct proof or where the facts come more immediately within the knowledge of the defendants, the onus probandi rested upon the appellants.

XI

The Court erred in holding that the burden of showing that appellant, H. Doi, was a citizen of the United States or eligible to become a citizen, a fact that was part of the corpus delicti and must be proven before a conviction could be had, was not upon the prosecution or appellee, but was upon the appellant.

[fol. 52]

XII

The Court erred in holding that under Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927 p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, there was a rational connection between the facts proved and the ultimate facts presumed.

XIII

The Court erred in holding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927 p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, did not, by casting upon appellant the burden of proving citizenship or eligibility to citizenship, compel said appellant, H. Doi, to be a witness against himself.

XIV

The Court erred in holding and deciding that appellant, H. Doi, solely by reason of the allegation in the indict-

ment that he was an alien, ineligible to citizenship, and the introduction of proof that he had the enjoyment, use, cultivation and occupation of agricultural property, was required to prove that he was a citizen either by birth or naturalization.

XV

The Court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927 p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, should cast upon appellant H. Doi the [fol. 53] burden of proving his citizenship or eligibility to citizenship under the naturalization laws of the United States, as a prerequisite to the enjoyment and occupation of or a beneficial interest in real estate in California, for agricultural purposes, are not discriminatory and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

XVI

The Court erred in holding that Section 9a of the Alien Land Act (Stats. 1927 p. 881) establishes a "rule of evidence".

XVII

The Court erred in deciding there was a natural and rational evidentuary relation between the facts proved and those presumed under Section 9a of the Alien Land Act.

XVIII

The Court erred in holding that the provisions of Section 9a of the Alien Land Act (Stats. 1927 p. 881), placing the burden of proving citizenship or eligibility to citizenship upon the defendant in any action, civil or criminal, by the State, under the provisions of such Act, when proof is introduced of the acquisition, possession, enjoyment, use, cultivation, occupation or transferring of real property, or interest therein, by any defendant, and the complaint, indictment or information alleges the alienage and ineligibility to United States citizenship of such defendant, are [fol. 54] valid, and the enactment of such section was a valid exercise of the power of the Legislature.

XIX

The Court erred in holding that the Legislature by statutory enactment has cast the burden upon those whose eligibility is challenged, in the name of the State, of proving such eligibility.

XX

The Court erred in ordering judgment to be entered affirming the judgment of the Superior Court of San Diego —, California, after judgment in District Court of Appeal, Fourth District (70 Cal. App. Dec. 488).

J. Marion Wright, Attorney for Appellants, Citizens National Bank Building, Los Angeles, California.

[fol. 55] [File endorsement omitted]

Received copy Aug. 11, 1933.
U. S. Webb, Attorney General, by Frank English, Deputy, D., Atty. for Respondent.

[fol. 56] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

PRAYER FOR REVERSAL—Filed Aug. 11, 1933

Now come George Morrison and H. Doi, appellants herein, and pray for a reversal of the judgment and decision of the Supreme Court of the State of California, in the action brought by the People of the State of California as plaintiff, against George Morrison and H. Doi as defendants, and appellants herein, which judgment was entered in the office of the Clerk of the Superior Court of San Diego County, State of California, on or about April 1, 1932, and they also pray for a reversal of the order of affirmance and judgment in said action of the Supreme Court of the State of California, entered in the office of the Clerk of said Court on June 1, 1933.

J. Marion Wright, Attorney for Appellants, Citizens National Bank Building, Los Angeles, California.

[fols. 57–59] Citation, in usual form, showing service on U. S. Webb, filed Aug. 11, 1933, omitted in printing.

[fol. 60] [File endorsement omitted]

Received copy Aug. 11, 1933.
U. S. Webb, Attorney General, by Frank English, Deputy, D., Atty. for Respondent.

[fol. 61] IN SUPREME COURT OF CALIFORNIA

Crim. 3601

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

GEORGE MORRISON and H. DOI, Defendants and Appellants

ORDER ALLOWING APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed Aug. 11, 1933

The above cause coming on to be heard, pending the petition of George Morrison and H. Doi for appeal, and the assignments of error to the Supreme Court of the United States, from the final judgment made and entered herein on the 1st day of June, 1933;

It is ordered that the appeal to the Supreme Court of the United States be and the same is hereby allowed; and

It is further ordered that this appeal shall operate to suspend and stay the fulfillment of said judgment rendered herein, until the determination of said appeal.

Emmett Seawell, Acting Chief Justice of the Supreme Court of the State of California.

[fol. 62] [File endorsement omitted]

Received copy of within præcipe August 11th, 1933.
U. S. Webb, Attorney General, by Frank English, Deputy, D., Atty. for Respondent.

[fol. 63] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Aug. 11, 1933

To the Clerk of the above entitled Court:

You are requested to make a transcript of record to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following papers and exhibits, to wit:

1. Amended indictment for conspiracy;
2. Demurrer to amended indictment and ruling thereon;
3. Pleas of the defendants;
4. Stipulation constituting all the evidence in the case;
5. Judgment of the Court;
6. Motion for a new trial and order denying motion for a new trial;

[fol. 64] 7. Notice of appeal;

8. Decision of the Supreme Court of the State of Californit, dated June 1, 1933;
9. Petition for appeal to the Supreme Court of the United States;
10. Assignments of error on appeal to the Supreme Court of the United States;
11. Prayer for reversal, to the Supreme Court of the United States;
12. Citation, to the Supreme Court of the United States;
13. Statement of grounds of jurisdiction;
14. Order allowing appeal;
15. This præcipe.
16. Petition for rehearing to Supreme Court of California from decision of District Court of Appeal, 4th District.
17. Order granting rehearing.
18. Copy of cost bond on appeal.
19. Proof of service of copies of papers on appeal on attorney for appellee, and calling attention to Rule 12, par. 3, Rules of Supreme Court of United States.

J. Marion Wright, Attorney for Appellants.

[fol. 65] [File endorsement omitted]

[fol. 66] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

PRÆCIPE OF PLAINTIFF AND RESPONDENT REQUESTING AMENDED COPY OF SECTION 9a OF THE ALIEN LAND ACT OF THE STATE OF CALIFORNIA (STATUTES OF CALIFORNIA 1927, p. 880) AND OF SECTION 1983 OF THE CODE OF CIVIL PROCEDURE OF THE STATE OF CALIFORNIA (STATUTES OF CALIFORNIA 1927, p. 434)—Filed Sept. 5, 1933

To the Clerk of the above entitled Court:

You are requested by the above plaintiff and respondent to make a transcript of record to be filed in the Supreme Court of the United States, indicating an additional portion of the record in the above entitled case, to-wit, amendments to the quotations found in the statement of grounds of jurisdiction disclosing the basis upon which it is contended the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question in the above entitled matter, which quotations are with reference to Section 9a of the Alien Land Act of the State of California (Statutes of California 1927, page 880), and [fol. 67] with reference to Section 1983 of the Code of Civil Procedure of the State of California (Statutes of California 1927, page 434).

The purpose of this request is to have of record in the United States Supreme Court a full, true and correct copy of the above described provisions in the Statutes of the State of California. Said full, true and correct copy of said statutory provisions which are herein requested in the matter of the appeal to the United States Supreme Court, heretofore allowed in the above entitled case, are as follows:

Section 9a of the Alien Land Act of the State of California (Statutes of California 1927, page 880):

"Sec. 9a. In any action or proceeding, civil or criminal, by the State of California, or the people thereof, under any of the provisions of this act, when the proof introduced by the state, or the people thereof, establishes the acquisition, possession, enjoyment, use, cultivation, occupation, or transferring of real property or any interest therein, or the having in whole or in part the beneficial use thereof

by any defendant, or any of such fact, and the complaint, indictment or information alleges the alienage and ineligibility to United States citizenship of such defendant, the burden of proving citizenship or eligibility to citizenship [fol. 68] shall thereupon devolve upon such defendant."

Section 1983 of the Code of Civil Procedure of the State of California 1927 (page 434):

"Whenever in any action or proceeding, civil or criminal, brought by, or in the name of, the state or the people thereof, or by or in the name of any political subdivision or agency of the state, or by any public board or officer on behalf of any thereof, to enforce any law which denies any right, privilege or license to any person not a citizen of the United States, or not eligible to become such citizen, or to a person not a citizen or resident of this state, and whenever in any action or proceeding in which the state or any political subdivision or agency thereof, or any public board or officer acting on behalf thereof, is or becomes a party, it is alleged in the pleading therein filed on behalf of the state, the people thereof, political subdivision or agency, or of such board or officer, that such right, privilege or license has been exercised by a person not a citizen of the United States, or not eligible to become such citizen, or by a person not a citizen or resident of this state, as the case may be, the burden shall be upon the party for or on whose behalf such pleading was filed to establish the fact that such right, privilege or license was exercised by [fol. 69] the person alleged to have exercised the same, and upon such fact being so established the burden shall be upon such person, or upon any person, firm or corporation claiming under or through the exercise of such right, privilege or license, to establish the fact that the person alleged to have exercised such right, privilege or license was, at the time of so exercising the same, a citizen of the United States, or eligible to become such citizen, or was a citizen or resident of this state, as the case may require, and was at said time legally entitled to exercise such right, privilege or license."

U. S. Webb, Attorney General of the State of California; Frank English, Deputy Attorney General; James S. Howie, Deputy Attorney General, Attorneys for Plaintiff and Respondent.

[fol. 70] Crim. No. 3601

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff & Respondent,

vs.

GEORGE MORRISON and H. DOI, Defendants and Appellants.

Affidavit of Service by Mail

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

The undersigned, being duly sworn, says: I am a citizen of the United States, over the age of eighteen years, a resident of the City and County of San Francisco, State of California, and not a party to the above entitled action; J. Marion Wright, the attorney of record of the above-named Defendants and Appellants, maintains an office at Citizens National Bank Bldg., in Los Angeles, County of Los Angeles, State of California, and between said two places there is a regular communication by mail; on the 21st day of August, 1933, I served a true copy of the Præcipe herein, to the original of which this affidavit is attached, on said last-named attorney of record, by depositing said copy on said date in the post office at the said City and County of San Francisco, enclosed in a sealed envelope addressed to said attorney at the office thereof, and prepaying the postage thereon.

Marguerite Gallagher.

Subscribed and sworn to before me this 21st day of August, 1933. Leonee Browne, Deputy Attorney General.

[fol. 71] [File endorsement omitted]

[fol. 72] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

AFFIDAVIT FOR ORDER ENLARGING TIME—Filed Sept. 18, 1933

STATE OF CALIFORNIA,
County of Los Angeles, ss:

J. Marion Wright, being first duly sworn, says: That he is attorney for the appellants in the above-entitled action.

That the return day fixed by the court for the filing of the record of this case with the clerk of the United States Supreme Court is September 20, 1933. That the clerk of the Supreme Court of California has not yet completed the record so that the same can be docketed with the clerk of the United States Supreme Court by or before said return day. That the clerk of said Supreme Court of California has requested that affiant secure an additional thirty days' time in order to give him time to prepare and file said record with the clerk of the United States Supreme Court. That it is necessary that an extension of time be had for the said clerk to complete said record so that it may be [fol. 73] properly docketed with the clerk of the United States Supreme Court. That it is necessary that the time be extended from September 20, 1933, to October 20, 1933.

Wherefore affiant prays for an order enlarging the time for the docketing of said case and the filing of the record thereof in the United States Supreme Court.

J. Marion Wright.

Subscribed and sworn to before me this 13th day of Sept. 1933. J. M. Clark, Notary Public in and for the County of Los Angeles, State of California. (Seal of J. M. Clark, Notary Public, Los Angeles Co., Cal.)

[fol. 74] [File endorsement omitted]

[fol. 75] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

ORDER ENLARGING TIME TO DOCKET CASE AND FILE RECORD THEREOF WITH CLERK OF THE UNITED STATES SUPREME COURT—Filed Sept. 18, 1933

Upon reading and filing the affidavit of J. Marion Wright, attorney for appellants, and good cause being shown, time for appellants to docket the above entitled cause and file the record thereof with the clerk of the United States Supreme Court, is hereby enlarged and extended from September 20, 1933 to and including October 20, 1933.

Dated September 14, 1933.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fols. 76–79] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 80 & 81] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF THE POINTS ON WHICH APPELLANTS RELY AND OF PARTS OF THE RECORD WHICH THEY THINK NECESSARY FOR THE CONSIDERATION THEREOF—Filed Sept. 27, 1933

Come now appellants and respectfully make the following statement of the points on which they intend to rely and of the parts of the record which they think necessary for the consideration thereof:

Point I

That Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927, p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, purporting to cast upon the defendant H. Doi the burden of proving he was a citizen of the United States or eligible to become one, where no proof whatsoever was introduced as to his citizenship or ineligibility to citizenship, but the indictment alleged that he was ineligible to citizenship, is unconstitutional and void, [fol. 82] being discriminatory and in violation of the equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and as violating the due process of law clause of the Fourteenth Amendment to the Constitution of the United States, and as violating Section 13, Article I of the Constitution of the State of California.

Point II

The court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927 p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, or statutes of the state of California, placing upon appellant H. Doi the burden of showing he is a citizen of the United States by birth or by naturalization, solely by reason of the allegation of his ineligibility to citizenship in the indictment, without any proof of any kind as to his citizenship or ineligibility to become a citizen, do not violate the due process clause and Section 13, Article I of the Constitution of California, and are not discrimina-

tory or in violation of the equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Point III

The court erred in holding and deciding that appellant H. Doi, solely by reason of the allegation in the indictment that he was an alien, ineligible to citizenship, and the intro- [fol. 83] duction of proof that he had the enjoyment, use, cultivation and occupation of agricultural property, was required to prove that he was a citizen either by birth or naturalization.

Point IV

The court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927, p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, which cast upon the defendant H. Doi, the burden of proving his citizenship or eligibility to citizenship under the naturalization laws of the United States, without requiring any proof whatsoever to be first made by the State or the people, and solely by reason of an allegation in the indictment alleging the ineligibility to United States citizenship of said defendant, are not in conflict with the due process of law provisions of the Constitution of the United States and the Constitution of the state of California.

Point V

The court erred in holding that under Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927, p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, there was a rational connection between the facts proved and the ultimate facts presumed.

Point VI

The court erred in holding that the burden of showing that appellant H. Doi, was a citizen of the United States or [fol. 84] eligible to become a citizen, a fact that was part of the corpus delicti and must be proven before a conviction could be had, was not upon the prosecution or appellee, but was upon the appellant.

Point VII

The court erred in applying to the case the so-called "rule of evidence", that is, the rule that when the negative of the issue does not readily permit direct proof or where the facts come more immediately within the knowledge of the defendants, the onus probandi rested upon the appellants.

Point VIII

The court erred in holding that Section 9a of the Alien Land Act (Stats. 1927, p. 881) established a "rule of evidence".

Point IX

The court erred in deciding there was a natural and rational evidentuary relation between the facts proved and those presumed under Section 9a of the Alien Land Act.

Point X

The court erred in holding that the provisions of Section 9a of the Alien Land Act (Stats. 1927, p. 881), placing the burden of proving citizenship or eligibility to citizenship upon the defendant in any action, civil or criminal, by the State, under the provisions of such Act, when proof is introduced of the acquisition, possession, enjoyment, use, cultivation, occupation or transferring of real property, or in- [fol. 85] terest therein, by any defendant, and the complaint, indictment or information alleges the alienage and ineligibility to United States citizenship of such defendant, are valid, and the enactment of such section was a valid exercise of the power of the legislature.

Point XI

The court erred in holding that Section 9a of the Alien Land Act as adopted in 1927 (Stats. 1927, p. 881) and Section 1983 of the Code of Civil Procedure also adopted in 1927, not, by casting upon appellant the burden of proving citizenship or eligibility to citizenship, compel said appellant H. Doi, to be a witness against himself.

Point XII

The court erred in holding that Section 9a of the Alien Land Act as adopted in 1927 (Stats. 1927, p. 881) and Sec-

tion 1983 of the Code of Civil Procedure of the state of California, also adopted in 1927, were constitutional, and do not violate the Fourteenth Amendment to the Constitution of the United States.

Point XIII

The court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927, p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, were constitutional, and do not violate the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

[fol. 86] Point XIV

The court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927, p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, did not deprive appellants and other citizens of the United States and of the state of California, of rights, privileges and immunities secured to the citizens of the United States by the Federal Constitution.

Point XV

The court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927, p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, did not deprive appellants and other citizens of the United States of liberty and property without due process of law.

Point XVI

The court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927, p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, did not deprive and deny to appellants and certain citizens and persons within the jurisdiction of the State of California the equal protection of the law.

Point XVII

The court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927, p. 881) and Section 1983 of the Code of Civil Procedure, also

[fol. 87] adopted in 1927, which provide that in any action or proceeding, civil or criminal, by the state of California, or the people thereof, under any of the provisions of said Act, when the proof introduced by the State or the people thereof, establishes the acquisition, possession, enjoyment, use, cultivation, occupation, or transferring of real property, or any interest therein, or the having in whole or in part the beneficial use thereof by any defendant, or any of such facts, and the complaint, indictment, or information, alleges the alienage and ineligibility to United States citizenship of said defendant, the burden of proving citizenship or eligibility to citizenship shall thereupon devolve upon the defendant, are not in conflict with the due process law provisions of the Constitution of the United States and the Constitution of the state of California.

Point XVIII

The court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927, p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, which cast upon the defendant H. Doi the burden of proving his citizenship or eligibility to citizenship under the naturalization laws of the United States as a prerequisite to the enjoyment and occupation, or a beneficial interest in real estate in California, for agricultural purposes, are not in conflict with the due process of law provisions of the Constitution of the United States and [fol. 88] the constitution of the state of California.

Point XIX

The court erred in holding and deciding that Section 9a of the Alien Land Act, as adopted in 1927 (Stats. 1927, p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, should cast upon appellant H. Doi the burden of proving his citizenship or eligibility to citizenship under the naturalization laws of the United States, as a prerequisite to the enjoyment and occupation of or a beneficial interest in real estate in California, for agricultural purposes, are not discriminatory and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Point XX

The court erred in holding that the legislature by statutory enactment has cast the burden upon those whose eligibility is challenged, in the name of the State, of proving such eligibility.

Point XXI

The court erred in ordering judgment to be entered affirming the judgment of the Superior Court of San Diego County, California, after judgment in District Court of Appeal, Fourth District (70 Cal. App. Dec. 488).

Point XXII

The court erred in holding that the provisions of Section 9a of the Alien Land Act (Stats. 1927, p. 880) placing the burden of proving citizenship or eligibility to citizen-[fol. 89] ship upon the defendants in any action, civil or criminal by the State under the provisions of such Act when proof is introduced of the acquisition, possession, enjoyment, use, cultivation, occupation or transferring of real property or interest therein by any defendant, and a complaint, indictment or information alleges the alienage and ineligibility to the United States citizenship of such defendant was valid, and the enactment of such section was a valid exercise of the power of the legislature.

Point XXIII

The court erred in holding that there was a rational or reasonable connection or relation between the fact proven, viz: that defendant H. Doi is in possession of agricultural lands, and the fact presumed, viz: that he is ineligible to citizenship.

Point XXIV

The court erred in holding that because the defendant is proven to be in possession of agricultural lands he is presumed to be a member of a race ineligible to citizenship.

Point XXV

There was no rational connection between the fact proved and the ultimate fact presumed. The inference that defendant H. Doi being in possession of agricultural lands

is an alien ineligible to citizenship, is unreasonable and unnatural, and purely arbitrary.

[fol. 90]

Point XXVI

The presumption created by Section 9a violates the limitation that there must be some rational connection between the fact proved and the ultimate fact presumed.

Point XXVII

The statutory presumption created by Section 9a is not rational and the connection between the fact proved and that presumed is not rational, and Section 9a is therefore unconstitutional.

Point XXVIII

It is absolutely necessary that there be some rational or reasonable connection between the fact proven and the fact presumed. In the present case there is no semblance of such connection. The mere fact that a defendant is brought into court and proof is made that he is using or is in possession of real property susceptible of producing agricultural products, is made the basis of a presumption that he is an alien ineligible to citizenship. There can be no possibility of any rational claim that the possession of land of that character by a defendant gives rise to any inference or presumption as to his alienage or citizenship.

Point XXIX

There is not the slightest connection or relationship between possession of real property and the alienage or citizenship of the person in its possession.

[fol. 91]

Point XXX

The presumption created by statute and based upon proof of such an unconnected and unrelated fact cannot be sustained as a valid exercise of legislative power.

Parts of the Record Which Appellants Believe Necessary for the Consideration of This Appeal

Appellants believe necessary for the consideration of this appeal the entire record, with the exception of appellee's motion to the Supreme Court of the United States to

dismiss order by Supreme Court of California allowing appeal, and appellee's statement disclosing grounds making against the jurisdiction of the United States Supreme Court as asserted by appellants. The record desired is as follows:

1. Amended indictment for conspiracy;
2. Pleas of the defendants;
3. Stipulation constituting all the evidence in the case;
4. Judgment of the court as contained in the minutes of the court;
5. Motion for a new trial and order denying motion for a new trial;
6. Notice of appeal as contained in minutes of the court;
7. Decision of the Supreme Court of the state of California, dated June 1, 1933, including dissenting opinion;

[fol. 92] 7a. Petition for hearing in the Supreme Court after decision in District Court of Appeal, Fourth Appellate District, called in appellants' præcipe "Petition for Rehearing", to Supreme Court of California from decision of District Court of Appeal, Fourth Appellate District;

7b. Order of Supreme Court granting hearing, called in appellants' præcipe "Order granting Rehearing";

8. Appeal to the Supreme Court of the United States;
9. Assignments of error on appeal to the Supreme Court of the United States;
10. Prayer for reversal to the Supreme Court of the United States;
11. Citation to the Supreme Court of the United States;
12. Statement of the grounds of jurisdiction in full, including all authorities and decisions;
13. Amendment to statement of grounds of jurisdiction;
14. Order allowing appeal;
15. Appellants' præcipe;
16. Acceptance of service of copies of papers on appeal, and copy of notice calling attention to provisions of Rule 12, Paragraph 3, Rules of the Supreme Court of the United States.

Respectfully submitted.

J. Marion Wright, Attorney for Appellants.

[fol. 93] Received copy of the within statement, etc., this 22d day of September, 1933.

U. S. Webb, Attorney General, by James S. Howie, Deputy.

[fol. 94] [File endorsement omitted.]

Endorsed on cover: File No. 38,090. California Supreme Court. Term No. 487. George Morrison and H. Doi, appellants, vs. The People of the State of California. Filed September 27, 1933. File No. 487, O. T., 1933.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 487

GEORGE MORRISON AND H. DOI, APPELLANTS,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

STATEMENT OF THE GROUNDS OF JURISDICTION, DISCLOSING THE BASIS UPON WHICH IT IS CONTENDED THE SUPREME COURT OF THE UNITED STATES HAS JURISDICTION UPON APPEAL TO REVIEW THE JUDGMENT IN QUESTION.

Come now appellants and present the grounds of jurisdiction, disclosing the basis upon which it is contended the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question. The decision in question, of the Supreme Court of the State of California, upholding the validity of Section 9*a* of the Alien Land Act of the State of California, as adopted in 1927 (Stats. 1927, p. 881), and Section 1983 of the Code of Civil Procedure of the State of California, also adopted in 1927, and the hold-

ing that said Section 9*a* of said Alien Land Act is constitutional and is not discriminatory or in violation of the equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and does not violate the due process of law clause of the Fourteenth Amendment to the Constitution of the United States, or the provisions of the Constitution of the State of California, is erroneous; and the said decision and judgment of the court does violate the Constitution of the State of California, and the due process clause of the Fourteenth Amendment to the Constitution of the United States, and is discriminatory and in violation of the equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States. The statutory provision believed to sustain the jurisdiction of this Court is the Fourteenth Amendment to the Constitution of the United States. The statute of the State of California which was held to be constitutional and valid, the validity of which is involved, is Section 9*a* of the Alien Land Act of the State of California, as adopted in 1927 (Stats. 1927, p. 881), being a portion of the Alien Land Act of the State of California (Stats. 1921, p. lxxxiii; Stats. 1923, p. 1020; Stats. 1927, p. 881), and Section 1983 of the Code of Civil Procedure of the State of California, as adopted in 1927.

Section 9*a* of said Alien Land Act is as follows:

> "SEC. 9*a*. Citizenship must be proved by defendant. In any action or proceeding, civil or criminal, by the state of California, or the people thereof, under any of the provisions of this act, when the proof introduced by the state, or the people thereof, establishes the acquisition, possession, enjoyment, use, cultivation, occupation, or transferring of real property or any interest therein, or the having in whole or in part the beneficial use thereof by any defendant, or any of such fact, *and the complaint, indictment or information alleges*

the alienage and ineligibility to United States citizenship of such defendant, the burden of proving citizenship or eligibility to citizenship shall thereupon devolve upon such defendant." (Italics ours.)

Section 1983 of the Code of Civil Procedure is as follows:

"Proof of Citizenship.—Whenever in any action or proceeding, civil or criminal, brought by or in the name of, the state or the people thereof, or by or in the name of any political subdivision or agency of the state, or by any public board or officer on behalf of any thereof, to enforce any law which denies any right, privilege or license to any person not a citizen of the United States, or not eligible to become such citizen, or to a person not a citizen or resident of this state, and whenever in any action or proceeding in which the state or any political subdivision or agency thereof, or any public board or officer acting on behalf thereof, is or becomes a party, it is alleged in the pleading therein filed on behalf of the state, the people thereof, political subdivision or agency, or of such board or officer, that such right, privilege or license has been exercised by a person not a citizen of the United States, or not eligible to become such citizen, or by a person not a citizen or resident of this state, as the case may be, the burden shall be upon the party for or on whose behalf such pleading was filed to establish the fact that such right, privilege or license was exercised by the person alleged to have exercised the same, and upon such fact being so established the burden shall be upon such person or upon any person, firm or corporation claiming under or through the exercise of such right, privilege or license, to establish the fact that the person alleged to have exercised such right, privilege or license was, at the time of so exercising the same, a citizen of the United States, or eligible to become such citizen, or was a citizen or resident of this state, as the case may require, and was at said time legally entitled to exercise such right, privilege or license."